IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8033 of 1997

with

SPECIAL CIVIL APPLICATION No 8775 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR and

MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TELEPHONE SUBSCRIBERS' ASSOCIATION

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 8033 of 1997

MR NK MAJMUDAR for Petitioners

MR JAYANT PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 4

MR AMIT J SHAH for Respondent No. 5

2. Special Civil ApplicationNo 8775 of 1997

MR NK MAJMUDAR for Petitioners

MR JAYANT PATEL for Respondent No. 1
MR KETAN A DAVE for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 4, 5

CORAM : MR.JUSTICE C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: /02/2000

CAV JUDGEMENT

Per Thakker, J.:-

Both these petitions are filed by the petitioners Telephone Subscribers' Association and others, for various reliefs prayed in respective petitions.

The case of the petitioners is that petitioner No.1 is a registered Association whose object is to safeguard and protect interests of the members of its Association in respect of telephone services. Other petitioners are members of petitioner No.1 Association and subscribers of telephones. By the present petitions, they challenge the action of the respondent authorities which is "high handed, arbitrary, illegal , illogical and discriminatory".

It is the case of the petitioners that members of petitioner No.1 Association are subscribers of telephones . It is alleged that mischief was played by officers and/or employees of telephone department and even though members of petitioner No.1 Association had not made international calls, officers/ employees of the department , in collusion with some persons, made certain telephone calls to foreign countries by misusing their power and authority and debited the amount in the accounts of the petitioners and the petitioners were called upon to pay bills of such telephone calls. Since members of petitioner No.1 Association had not made international telephone calls, they made a grievance to the authorities particularly to respondents Nos.2 to 4, who are senior officers of the department. They, however, failed to discharge their duty and did not take any action in accordance with law nor safeguarded interests of telephone subscribers and in these circumstances, they are constrained to approach this Court.

Petitioners have also highlighted the circumstances which would clearly establish that the petitioners have not made any international telephone calls for which a demand was made by the department and that such action must have been taken by misuse of power or authority by some one in collusion or in connivance with the officers/ employees of the department by making/ allowing illegal use of telephone lines of the petitioners. Petitioners have also made reference to a similar mischief said to have been played with other telephone numbers. In those cases also, international telephone calls were made and STD calls were registered from those telephone numbers even though they had not made such STD/international calls. According to the petitioners, unless and until employees of the telephone department who are conversant with the working of Exchange and with telephone lines and telephone numbers with ISD/ STD facilities are involved, such mischief/ tampering is not possible. A serious grievance was voiced by the petitioners that a very planned racket had been going on by the officers/ employees of the department. But instead of investigating into such illegal activities and punishing/ penalising officers responsible for it, the blow was sought to be administered on innocent subscribers who would become victims of a well planned conspiracy of employees of the department. In the submission of the petitioners, the matter ought to have been sent to Central Bureau of Investigation (`CBI' for short) for thorough investigation, but it was not done by the department with a view to save the skin of employees/ officers of the department. Petitioners have also stated that they have sufficient materials to establish that not the petitioners but the officers/ employees of the department have committed mischief at Exchange level. When necessary materials and evidence are available, it was the bounden duty of the respondent authorities to make thorough investigation, but the respondents have failed to discharge such duty and wanted to make subscribers liable which compelled them to approach this Court by filing the present petitions.

The Petitioners, in these circumstances, prayed the following reliefs in para 8 of the petitions:

8. The petitioners,therefore, humbly pray that this Honourable court may:

(A) Be pleased to admit this petition;

(B) Be pleased to direct the respondents Nos.1 to 4 to take initiate detailed inquiry in respect of disputed bills in connection with the fake calls, in connection with the petitioners telephone nos. and be pleased to direct the respondent No.3 to take/initiate inquiry in aforesaid misuse of telephone lines at `33' level of Baroda Telecom District:

(C) Be pleased to issue appropriate writ, order or direction to hand over inquiry/ investigation of misuse of telephone connection of `33' level exchange at Race Course Exchange, Baroda Telecom District to respondent No.5 in this regard and further be pleased to direct the respondent No.5 to submit the detailed report after due investigation in this Telephone Scandal before the Honourable court and further be pleased to take necessary action in this regard against the persons involved in aforesaid misusing of telephone scam;

(D) Be pleased to direct the respondent No.1 to 4 to repay the amount of disputed bill mentioned at Ann. `A-12' with 18% interest.

(E) Be pleased to grant such other and further relief(s) as are deemed fit in the interest of justice."

It appears that initially, SCA No. 8033 of 1997 was placed before a Single Judge , but he was of the opinion that the matter was in the nature of Public Interest Litigation (PIL) . Office was,therefore, directed to place the matter before an appropriate Court. Notice was thereafter issued on January 19, 1998 and the respondents appeared. On March 3, 1998, the Division Bench (Coram: K. Shreedharan, C.J. and A.R.Dave,J.) passed the following order:

"The respondents have not filed any affidavit in reply to the averments made in this petition. They are directed to file the reply affidavit within two weeks. They must specifically state the reason why a dispute which was brought to their notice regarding the excess billing was not referred to arbitration as provided under Section 7B of the Indian Telegraphs Act, 1885.

Adjourned to 18.3.1998. Post this along with Special Civil Application No. 8775 of 1997."

Meanwhile, another petition, being SCA No. 8775 of 1997 was also filed which was ordered to be heard along with SCA No. 8033 of 1997. On March 18, 1998, the Division Bench observed that the respondents had not filed any counter . They were,therefore, directed to file counter within two weeks. The Court also directed to specifically state the reasons why the dispute which was brought to their notice regarding excess billing was not referred to arbitration as provided under Section 7B of the Indian Telegraphs Act, 1885. Even thereafter, time was granted to file a counter as a last chance . On May 4, 1998, the Division Bench directed the office to place the above matter for final hearing on August 3, 1998. Even thereafter, the matter was adjourned from time to time.

Affidavit in reply was filed by Mr. P.G.Khanchandani, Accounts Officer (TR-1) , GMID, Baroda, in which, it was inter alia stated:

"I state that the abovereferred excess billing complaints were thoroughly examined by the competent authority of the department. During course of investigation, it was found that there was no fault in telephone line and associated exchange equipments. The competent authority has also examined as to whether there was any complaint regarding fault during the disputed billing period. The competent authority did not find any abnormality in the metering pattern recorded during the disputed period. There was no technical reason found to justify any rebate in calls.

I state that considering overall facts and circumstances of each case, the excess billing complaint was regretted and each of petitioner/subscriber was informed about the same .It is pertinent to note that case of Shri Deepak R Shastri who is STD/PCO holder can not be equated and/or compared with a subscriber. I state that a STD/PCO holder is a franchise holder of the department. In case of a STD/ PCO holder, he terms and conditions are governed by licence

agreement.

5. I state that excess billing complaints are regretted by the General Manager, Vadodara Telecom District, Vadodara . Petitioners can prefer an appeal against the decision of the General Manager to Chief General Manager, Gujarat Circle, Ahmedabad. The petitioners have not filed any appeal to the higher authority against the decision of the General Manager. I therefore submit that this petition is premature as petitioners have not completely exhausted the departmental remedy available to them.

I submit that petitioners have also alternative remedy by way of arbitration under Sec. 7B of Indian Telegraph Act.

6. I submit that this Honourable court has vide its order dated 3.3.1998 directed the department to file reply affidavit stating the reason why the dispute regarding excess billing was not referred to arbitrator as provided under Section 7B of the Indian Telegraph Act.

In this connection, I submit that as pointed out hereinabove, petitioners have not made any representation to the competent authority for seeking arbitration under Section 7B of Indian Telegraph Act. As pointed out hereinabove, excess billing complaints were preferred by petitioners. These complaints were after necessary investigation, regretted by the competent authority on the ground that there was no technical defect in telephone line and associated exchange equipments. The petitioners were informed about the outcome of their excess billing complaints. I state that even after the various excess billing complaints were rejected by the competent authority, petitioners did not make any request to the competent authority to refer their excess billing disputes for arbitration under Section 7B of Indian Telegraph Act.

I state that the department has not refused arbitration in case of any of petitioners. I submit that the department has no objection to refer the excess billing dispute raised by the petitioners to the arbitration.

I state that department of Telecommunication has issued a circular dated 5.7.1996 bearing No.13-3/96-TR, in connection with appointment of arbitrator under section 7B of the Indian telegraph Act. The aforesaid circular provides for procedure to be adopted in cases where subscribers want to resolve the dispute through arbitrator.

A copy of the abovereferred circular dated 5.7.1996 is annexed hereto and marked as Annexure I.

7. I state that it is not correct that the departmental authorities are not giving proper attention to complaints regarding misuse of ISD facility. It is not correct that persons working in the exchange know about secret code applied by subscribers. It is not correct that vigilance inquiries are not ordered.

I state that the department has issued necessary instructions in telephone directory as to how dynamic lock should be applied to the telephone. If the subscriber is facing any difficulty in connection with dynamic lock, necessary instructions are furnished in telephone directory about how to apply dynamic lock. I state that necessary instructions are given in telephone directory about who is to be approached in case of complaints regarding non-working of dynamic lock,I submit that department has also issued advertisement in newspaper requesting subscribers to use dynamic lock to avoid possible misuse of telephone lines by third party.

I submit that the department has made all possible attempts to educate subscribers about dynamic lock,I submit that subscribers should avail dynamic lock to avoid possible misuse of his telephone by third party. It is not possible to know dynamic locking code of subscriber from the exchange.

I state that the allegation regarding misuse of telephone lines by the staff of the department from the exchange is baseless. I state that petitioners are provided telephone connections from E-10-B Electronic Exchange. I state that the telephone exchange equipment remain in lock and key during the period from

20.00 hrs. to morning 08.00 hrs. I state that its key is kept by responsible officer of the exchange.

8. I state that at the time of installation of "33" level exchange, STD/ISD facility was provided to subscribers. As a result of automisation of exchange, it is possible to provide STD facility alone on demand. Earlier , ISD facility was automatically made available to STD subscribers. I state that the higher authority of the department is conscious about possible misuse of ISD facility. I state that the General manager, Vadodara Telecom District has decided to withdraw ISD facility from all telephone connections with effect from 8.8.1997.

I submit that now unless there is specific request for ISD facility, then only the ISD facility has been provided."

A similar affidavit was filed in a cognate matter, being SCA No.8775 of 1997.

The stand of the respondents as reflected in the affidavits is that there was no fault in the telephone lines and associated exchange equipments. Authorities also did not find any abnormality in the metering pattern recorded during the disputed period and each subscriber was informed about the said decision. It was further stated that none of the petitioners had made any representation to the competent authority for seeking arbitration under Section 7B of the Indian Telegraph Act against excess billing and the department had no objection to refer excess billing dispute raised by the petitioners to arbitration. It was also stated by the deponent that the department of Telecommunication had issued a circular on July 5, 1996 a copy of which was annexed to the affidavit in reply for appointment of arbitrator under Section 7B of the Act. Said Section provides for procedure to be adopted in case where subscriber wants to resolve dispute through arbitrator. It was,therefore, submitted that petitioners ought not to have made grievance by filing petitions in this Court . As the action of the department could not be said to be illegal, arbitrary or unreasonable, the petitions are liable to be dismissed.

In the facts and circumstances of the case, in our opinion, both the petitions can be disposed of by issuing

appropriate directions. Contention of Mr. Majmudar for the petitioners is that there is a deep-rooted and planned conspiracy and the officers/ employees of the department in collusion with unauthorised elements have misused telephone lines of subscribers of petitioner No.1 Association and now the department is insisting payment of telephone bills from innocent subscribers. Though attention of the authorities was invited to serious allegations, no action whatsoever was taken by them against officers/ employees. Counsel, therefore, submitted that this is eminently a fit case in which a high-power committee can be ordered to be appointed by this Court which may go into the allegations levelled by the petitioners and submit its report to the General Manager so as to enable him to take appropriate proceedings against erring officers.

In this connection, our attention was invited by the learned counsel to the decision of the Supreme Court in Surehkumar Sharma vs. Chairman, UP ACB and others, 1998 (2) SCC 66. In that case, there was a large scale theft of electricity and pilferage of coal wagons. A Public Interest Petition (PIL) was filed making serious allegations against the officers alleging that without connivance of officers of the Electricity Board, it would not have been possible that there would be such a large scale theft and hence, appropriate directions were required to be issued against the respondents. In the light of the allegations and averments made in the petition, the Apex Court appointed a High-power Committee consisting of responsible officers and the authorities were directed to extend all helps to the Committee so as to reach correct conclusion and also to take appropriate action against officers responsible for such illegal acts.

In the facts and circumstances of the present case also, in our opinion, ends of justice will be met if a committee can be appointed consisting of certain senior officers. We, therefore, direct that the respondents will appoint a committee consisting of the following members:

(1) Divisional Engineer, Telephones;
(2) Officer appointed by the General Manager not below the rank of Deputy General Manager;
(3) Retired judicial officer not below the rank of District Judge/ Assistant Judge;
(4) A person nominated by the Telephone Subscribers' Association, (petitioner No.1);
(6) Police officer not below the rank of

Superintendent of Police;
(7) A representative from CBI not below the rank of Inspector.

Respondents are directed to extend all cooperation so that the committee can effectively do this work. The committee will consider the allegations contained in the petitions as also other allegations made by petitioner No.1 Telephone Subscribers' Association. It will also consider the defence put forward by the department. For that purpose, the committee may also call for necessary record, materials and will exercise all powers to summon parties, to record their statements and to receive such evidence as is necessary for the purpose of completing the task undertaken by it. The committee will submit its report to respondent No.2- General Manager, as expeditiously as possible, preferably within three months from the receipt of the writ. In the report, the committee will record its findings and it will also make necessary suggestions/ recommendations/ guidelines for taking preventive measures so that in future no such incidents are repeated. The department will take appropriate actions on the basis of the report submitted by the committee. The department will also circulate the order passed and actions taken in pursuance of the report of High Power Committee to all zonal and other offices of the department.

So far as arbitration is concerned, it is stated even by the respondents in the counter affidavit that the department has no objection to refer the excess billing dispute raised by petitioner No.1 Association to arbitrator under Section 7B of the Indian Telegraphs Act. It is,therefore, directed that the dispute will be referred to the arbitrator under Section 7B of the Act who will decide the said dispute. If the petitioner/s is/are aggrieved by the said decision, it would be open to him/ them to take appropriate proceedings in accordance with law.

Regarding last prayer for connection of telephones and payment of bills, it was stated by the learned counsel for the petitioners that majority of the petitioners have already paid the amount and suitable directions regarding refund thereof may be given. It was also stated that certain petitioners, under the threat of disconnection of telephones, had paid substantial amount and only part of it is to be paid. They may not be directed or compelled to pay the remaining amount. Regarding subscribers who have not paid telephone bills since they were not liable to pay, department may be directed to connect their

telephones without insisting for payment of telephone bills.

In the facts and circumstances, in our opinion, no such direction can be given . We, however, grant liberty to the petitioner/s to make representation to the appropriate authority in accordance with law, relieving him/ them from paying amounts and/or reducing part thereof and to continue telephone service if it has not already been discontinued or to reconnect telephone lines without any payment or part payment as directed by the authorities. It is open to the authorities to take appropriate action in accordance with law , however, in the light of the facts and circumstances and allegations levelled in the petitions. It is also clarified that payment which has already been made or which will be made by the petitioner/s will be without prejudice to the rights and contentions of the petitioner/s in appropriate proceedings.

For the aforesaid reasons, in our opinion, both the petitions are required to be partly allowed and are accordingly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs. Liberty to apply in case of difficulty.

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parekh